

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE ROMERO ARROYO,

Defendant and Appellant.

F058899

(Super. Ct. No. F07905623)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gary R. Orozco, Judge.

Robert L. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lloyd G. Carter, and Leanne LeMon, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Dawson, Acting P.J., Poochigian, J., and Detjen, J.

On September 17, 2009,¹ pursuant to a plea agreement, appellant, Rene Romero Arroyo, pled guilty to committing a forcible lewd act upon a child (Pen. Code, § 288, subd. (b)(1))² and admitted an allegation that he committed that offense during the commission of a first degree burglary (§ 667.61, subd. (d)(4)). On October 16, the court imposed a prison term of 25 years to life and made various other orders. On October 20, the court, after explaining that it had “left out” two orders, ordered, inter alia, that appellant pay a fine of \$300 pursuant to section 290.3, subdivision (a) (section 290.3(a)).³

On appeal, appellant argues the court lacked the power to impose the section 290.3(a) fine four days after sentencing, and therefore the fine must be stricken. The People concede the point. We will strike that fine and otherwise affirm.

DISCUSSION

Generally speaking, the trial court loses the power to modify a sentence to increase the defendant’s punishment when (1) execution of the sentence has commenced, or (2) the sentence is entered in the minutes. (*People v. Karaman* (1992) 4 Cal.4th 335, 345, 350.) However, courts have inherent authority to correct clerical errors in a sentence at any time (*In re Candelario* (1970) 3 Cal.3d 702, 705), and an unauthorized sentence may be corrected whenever the error comes to the attention of the court (*In re Harris* (1993) 5 Cal.4th 813, 842).

Here, the record reveals that appellant’s original sentence, imposed on October 16, was entered in the minutes that same day, four days prior to the court’s imposition of the

¹ Further references to dates of events are to dates in 2009.

² Except as otherwise indicated, all statutory references are to the Penal Code.

³ Section 290.3 mandates the imposition of a fine of \$300 for the first conviction, and \$500 for the second conviction, of certain enumerated offenses, including forcible lewd act upon a child, unless the court finds the defendant does not have the ability to pay the fine. (§ 290.3(a).)

section 290.3(a) fine. And at sentencing, the court ordered appellant remanded to the custody of the Fresno County Sheriff for transportation to the California Department of Corrections and Rehabilitation. We presume, therefore, that appellant began serving his sentence before the court's purported modification of sentence. (Evid. Code, § 664 ["It is presumed official duty has been regularly performed"].) Thus, as the parties agree, on October 20 the court was without jurisdiction to increase appellant's punishment by imposing the section 290.3(a) fine.

As the parties also agree, neither of the exceptions to the general rule set forth above applies here. First, because the error was "made in rendering the judgment," rather than in "recording the judgment," it was judicial error, not clerical error. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1205.) Moreover, the failure to impose the section 290.3(a) fine did not result in an unauthorized sentence. (*People v. Stewart* (2004) 117 Cal.App.4th 907, 911 ["If a trial court fails, without explanation, to impose the section 290.3, subdivision (a) sex offender fine, that is not a jurisdictional error"].) Accordingly, we will strike the section 290.3(a) fine.

DISPOSITION

The judgment is modified as follows: the \$300 fine imposed pursuant to Penal Code section 290.3, subdivision (a), is stricken. As modified, the judgment is affirmed.